

HOW TO DEAL WITH INTERNET INTERMEDIARIES' LIABILITY?

Internet intermediaries assist audiences in accessing online content and play a crucial role in digital society communication and are, therefore, under constant scrutiny by governments, academics and civil society.



Professor Paul Bernal

Professor Paul Bernal shares views about the concept of public duty in relation to intermediaries. Prof. Bernal puts forward a number of questions that first need to be clarified before stepping into regulation.

The first one pertains to the real nature of intermediaries. Taking stock of the evidence we have to decide whether they represent public utilities, whether they are free speech champions, or eventually are merely businesses which need to be considered within those terms.

A second important question is who the relevant regulators are and what functions they discharge. The aim of the regulatory bodies merits a particular focus in this respect more precisely whether they work to help businesses or to “protect” people.

The third issue relates to the power of lobbyists. We need to think seriously about this group and find a way to stop governments from being unduly influenced by them.

Another problem here is whether the gist of the discussion is really about the internet intermediaries or they are, in effect, being scapegoated because the underlying problem is too horrible to face or too difficult to solve.

Last but not least one should not forget about the ‘unexpected’ consequences of any actions that are taken. To call them unexpected is often misleading. If the right people are listened to more, these consequences could be anticipated and taken into account before the final decisions are made.

Against this background three particular areas of interest stand out: hate speech, the right to be forgotten and copyright breaches. With respect to hate speech, it is easy to blame the intermediaries, but in practice it is difficult to deal with it. There are two alternative routes for settling the dilemma: human intervention or algorithmic/automated systems. The first is expensive, slow and subject to bias, and the second complex is easily gamed and pronged to both false positives and omissions. The author thinks that there are strong echoes of this in the

current debate over ‘fake news’: fake narratives have often prevailed in the tabloid press without any such alarm.

As far as the right to be forgotten is concerned, the debate is both polarizing and misleading. The genuine problems suffered by people whose lives are crushed by old or inappropriate stories that have being highlighted during searches online are not taken into account at all by discussing parties.

Regarding copyright, at times it seems like a battle of the lobbyists, with the intermediaries in constant conflict with the copyright lobby. The controversy is that the views of the public remain largely unconsidered.

Prof. Bernal suggests two paths to finding a better way forward. One is to acknowledge the complexity of the situation. The tendency to demonize the Internet – and Internet intermediaries, in particular – should be avoided wherever possible. The second is to be more willing to listen to academics and to civil society. The latter should be treated as a valuable resource as there is a great deal of expertise and experience in it, and if it is understood and consulted timely and appropriately, far better solutions can be found.



Compiled by Media 21 Foundation (2019) from

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